IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

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PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 16561 of 2004

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Between:

Kalidindi Rama Raju, S/o.K.Subbaraju,
S.No.92/2A, Ranaprathap Nagar, Marripalem, Visk.

..... PETITIONER

AND

-

The Municipal Commissioner, Municipal Corporation

buildings, Visakhapatnam.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent in resorting to demolition in spite of submission of explanation dt.9-3-2004 and 6-9-2004 as highly arbitrary and illegal and consequentially direct the respondent to regularise minor deviations if any by imposing compounding fee in respect of building situated at in plot No.3-51, T.S.No.92/2A, ward No.42, situated at marripalem, Visakhapatnam of the petitioner.

Counsel for the Petitioner: MR.T.M.K.CHAITANYA

Counsel for Respondent: MR.T.S.VENKATARAMANA

The Court at the admission stage made the following :

ORDER:

Heard learned counsel for the petitioner and learned Standing Counsel for

the respondent. Both have no objection for disposal of the writ petition at the admission stage.

This writ petition is filed seeking a Writ of Mandamus declaring the action of the respondent in resorting to demolish the building in spite of submission of explanation dated 09-3-2004 and 6-9-2004 as illegal and consequently direct the respondent to regularize minor deviations, if any, by imposing compounding fee in respect of building situated in Plot No.3-51, T.s.No.92/2A, Ward No.42 of Marripalem, Visakhapatnam of the petitioner.

The facts, in brief, are that petitioner, who obtained construction permission from the respondent-Municipality through proceedings BA.No.2003-BA-10991/ACP-III/G7 dated 8-9-2003, was served with a notice dated 27-2-2004 under Section 452 of Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') which was received by him on 3-3-2004, wherein it was stated that the petitioner commenced the construction work without issuing the commencement of work notice as required under Section 440 of the Act and accordingly he was called upon to explain as to why action should not be taken against him. To the same, the petitioner submitted his explanation on 10-9-2004. But, in spite of submission of the said explanation, the respondent is trying to demolish the construction of the said building without serving any notice under Section 636 of the Act.

Learned counsel for the petitioner submitted that only after the Municipality comes to the conclusion that the construction is in violation of the statutory provisions, notice as contemplated under Section 636 of the Act has to be issued and then take necessary action.

Having regard to the facts and circumstances of the case, the respondent is directed not to demolish the disputed construction that was already made, without issuing notice as contemplated under Section 636 of the Act. If any such notice is issued, the respondent shall give some reasonable time to the petitioner to approach the competent Civil Court and the said notice shall not be implemented for a period of four weeks from the date of service on the petitioner so as to enable the petitioner to avail appropriate remedies.

With the above observations, the writ petition is disposed of at the admission stage.

A. Gopal Reddy, J.

16th September, 2004.

Js.

ASSISTANT REGISTRAR

To

1 The Municipal Commissioner, Municipal Corporation

Buildings, Visakhapatnam.

2 2 CD copies.